

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

RONALD WEAVER,

Civil No. 99-1045-ST

Petitioner,

v.

JOAN PALMATEER,

FINDINGS AND RECOMMENDATION

Respondent.

Todd H. Grover  
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Attorney for Petitioner

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Attorneys for Respondent

STEWART, Magistrate Judge.

On October 3, 2008, the court granted petitioner's Rule 60 Motion and reopened this case to adjudicate Grounds Two and Three from his Corrected Amended Petition for Writ of Habeas Corpus (docket #180). Following supplemental briefing, petitioner's Grounds Two and Three are currently before the court for disposition. For the reasons that follow, Grounds Two and Three of the Corrected Amended Petition for Writ of Habeas Corpus (docket #43) should be denied.

#### **BACKGROUND**

Petitioner was suspected of committing approximately 20-30 rapes between December of 1981 and August of 1982. Respondent's Exhibit 101, p. 2. This led to his indictment in both Multnomah and Clackamas Counties on numerous charges. Petitioner pled guilty in both counties and ultimately received sentences totaling 70 years, with a 35-year minimum.

The District of Oregon granted habeas relief as to petitioner's Ground One claim of ineffective assistance of counsel, but the Ninth Circuit Court of Appeals reversed that decision on March 26, 2007 (docket #151). As petitioner's Ground One claim of ineffective assistance has been resolved, the court is left only with the following claims:

Ground Two:      The trial court failed to advise  
                         petitioner of the possibility for  
                         consecutive sentences between the

convictions arising out of both Multnomah and Clackamas Counties;

Ground Three: The prosecutor engaged in misconduct in violation of the Fourteenth Amendment when he recommended a term of incarceration longer than that contained in the plea agreement.

Corrected Amended Petition (docket #43).

#### **FINDINGS**

The court has addressed these grounds for relief and petitioner's arguments in *Weaver v. Palmateer*, Case No. CV. 99-1150-ST, another habeas case filed by petitioner in which the court recommends denying relief. For the reasons identified in the court's Findings and Recommendation in that case (docket #222), the Corrected Amended Petition in this case also should be denied.

#### **RECOMMENDATION**

The Corrected Amended Petition for Writ of Habeas Corpus (docket #43) should be DENIED. The court should decline to issue a Certificate of Appealability on the basis that petitioner has not made a substantial showing of the denial of a constitutional right pursuant to 28 U.S.C. § 2253(c)(2).

#### **SCHEDULING ORDER**

The Findings and Recommendation will be referred to a district judge. Objections, if any, are due March 15, 2010. If no objections are filed, then the Findings and Recommendation will go under advisement on that date.

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If objections are filed, then a response is due within 14 days after being served with a copy of the objections. When the response is due or filed, whichever date is earlier, the Findings and Recommendation will go under advisement.

DATED this 24th day of February, 2010.

s/ Janice M. Stewart  
Janice M. Stewart  
United States Magistrate Judge